IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 263 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MRUDULABEN DUSHYANTBHAI AMIN

Versus

ARUNBHAI RAVJIBHAI AMIN

Appearance:

1. Civil Revision Application No. 263 of 1999

MR SUDHANSHU S PATEL for Petitioner No. 1-3

MR MANISH R BHATT for Respondent No. 1-2

DS AFF.NOT FILED (R) for Respondent No. 3-5

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 23/12/2002

ORAL JUDGEMENT

1. This is a Revision Application under section 115 of the Code of Civil Procedure, which will now be

governed by the said Code as amended by the Code of Civil Procedure (Amendment) Act, 1999.

2. The present applicants are the original defendants No. 1,2 and 3 in a suit filed against them by the present respondents No. 1 and 2. The present opponents No. 3,4 and 5 are original defendants No. 4, 5 and 6.

3. During the pendency of the suit, the present applicants being defendants No. 1,2 and 3 gave an application at Exh. 12 wherein they prayed that an issue of jurisdiction of the trial Court be raised and decided by way of a preliminary issue. The trial Court, after hearing the parties, rejected the said application. However, it is required to be noted that the order of rejection is not confined to the refusal of the Court to raise the issue as to its own jurisdiction to deal with the subject matter of the suit as contended by the present applicants-defendants. This order passed by the trial Court which is the subject matter of the present Revision is a detailed and speaking order, which has dealt with the respective contentions of both the sides, and has in fact decided the contentions of the applicants as to the jurisdiction of the Court by specifically holding that the Court has jurisdiction to hear the suit as presented by the plaintiff. Thus, in fact and substance, the trial Court has not simply refused to raise a preliminary issue, but has gone into the contentions raised in the application itself, and has in fact decided the said issue by holding that it has jurisdiction to hear the suit.

4. Under the aforesaid circumstances, by virtue of the amended section 115 of the Code of Civil Procedure, this Revision Application is not maintainable. The Revision Application is, therefore, dismissed and rule is discharged with no orders as to costs.

[Y.B. BHATT, J.]

mathew